

Editor's note: Reconsideration denied by Order dated June 23, 1987

GARY YEANEY d.b.a. BLACK HAWK
COAL COMPANY
v.
OFFICE OF SURFACE MINING RECLAMATION
AND ENFORCEMENT

IBLA 86-51

Decided April 22, 1987

Appeal from an order of Administrative Law Judge Joseph E. McGuire dismissing with prejudice an application for review. CH 5-23-R.

Reversed and remanded.

1. Surface Mining Control and Reclamation Act of 1977: Discovery:
Generally

Where possible, in interpreting the Department's discovery rules under the Surface Mining Control and Reclamation Act of 1977, the body of case law which has evolved under the Federal Rules of Civil Procedure will be applicable.

2. Surface Mining Control and Reclamation Act of 1977: Discovery:
Generally

An order by an Administrative Law Judge dismissing an application for review for failure to file answers to interrogatories, as directed, will be reversed on appeal where there is no evidence that the applicant's failure to file those answers prior to issuance of the order was a substantial error prejudicing OSM's case.

APPEARANCES: Allan E. MacLeod, Esq., Coraopolis, Pennsylvania, for appellant; David P. Behrens, Esq., Office of the Field Solicitor, Pittsburgh, Pennsylvania, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Gary YeaneY d.b.a. Black Hawk Coal Company (YeaneY or Black Hawk) 1/ has appealed from an order issued by Administrative Law Judge Joseph E.

1/ Gary YeaneY is the only general partner in Black Hawk Coal Company, a limited partnership, according to appellant's answers to interrogatories propounded by OSM.

McGuire on October 3, 1985, dismissing with prejudice Yeaneys application for review of Notice of Violation (NOV) No. 85-121-145-2 and Cessation Order (CO) No. 85-121-145-3.

The Office of Surface Mining Reclamation and Enforcement (OSM) issued the NOV on May 6, 1985, for failure to pay reclamation fees as required under section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1232 (1982), and 30 CFR 870.15. The NOV specified that "[t]he operator shall pay all fees and any accumulated interest and/or penalty owed to the Secretary of the Interior for deposit in the reclamation fund," or "[t]he operator shall secure a payment schedule agreement with the Secretary of the Interior, to pay the total amount owed over a specified period of time." The NOV established an abatement deadline of May 20, 1985. The abatement time was subsequently extended to May 24, 1985. On May 24, 1985, OSM issued the CO under authority of section 521(a)(3) of SMCRA, 30 U.S.C. § 1271(a)(3) (1982), for failure to abate the violation named in the NOV.

Yeaneys filed an application for review on June 5, 1985, arguing that the reclamation fees had already been reported by Pansy Hollow Contractors, Inc. (Pansy Hollow), the operator on the permit site. Yeaneys stated that judgment was entered in the United States District Court for the Western District of Pennsylvania on July 18, 1984, against Pansy Hollow for the reclamation fees owed, "as to which proceeding [Yeaneys] was not a party" (Application for Review at 2). In addition, Yeaneys states that in the NOV and CO, OSM listed Pansy Hollow's Mine Safety and Health Administration (MSHA) identification number rather than Yeaneys's. In sum, Yeaneys contends that "Pansy Hollow was solely subject to payment of OSM fees on coal produced from the premises" (Application for Review at 2).

In its answer, OSM stated that while it recited 36-17126 as the MSHA identification number, that number was at one time assigned to Gary Yeaneys d.b.a. Black Hawk before it was transferred to Pansy Hollow. OSM denied that the judgment entered against Pansy Hollow by the United States District Court for the Western District of Pennsylvania covered all reclamation fees and interest owed at the time the NOV was issued. Moreover, OSM contended that Yeaneys, as general partner in Black Hawk (a limited partnership), and as Secretary-Treasurer of Pansy Hollow, "controlled or directed the removal of the coal for which the reclamation fees and interest are due and unpaid" (Answer at 3). OSM concluded that Yeaneys, in his individual capacity and as general partner in Black Hawk, is responsible for payment of the reclamation fees.

This matter was assigned to Judge McGuire for a hearing, and on August 7, 1985, he issued a notice that the hearing was scheduled for September 18, 1985.

Pursuant to 43 CFR 4.1139, OSM propounded a series of 11 written interrogatories to Yeaneys, requesting that they be answered within 30 days of service, or at least 7 days prior to the hearing. These interrogatories related to the legal nature of Black Hawk, Yeaneys's status in that business, facts surrounding the incorporation of Pansy Hollow and the identity of its

officers and directors, whether Black Hawk was permittee of the mined area, and the nature of the relationship between Black Hawk and Pansy Hollow.

On August 21, 1985, OSM filed a motion to compel Yeanev to file answers to the interrogatories on or before September 11, 1985, which would allow Yeanev 3-1/2 weeks to submit his answers, and which would allow OSM 7 days from their receipt to adequately prepare for the hearing. By order dated August 21, 1985, Judge McGuire granted OSM's motion. The order indicated that failure to comply with the order would result in dismissal of the application for review with prejudice.

On September 5, 1985, counsel for Yeanev filed a motion for continuance of the hearing scheduled on September 18, 1985, asserting that he would be representing another client in a criminal matter which was scheduled prior to the hearing before Judge McGuire, and that he could not locate suitable substitute counsel. In this motion, counsel for Yeanev stated that counsel for OSM had agreed to the continuance. Judge McGuire made no ruling on this motion. Instead, on October 3, 1985, Judge McGuire issued the order challenged in this appeal. His order simply stated that because Yeanev failed to submit answers to written interrogatories by September 11, 1985, his application for review was dismissed with prejudice. Yeanev filed answers to the interrogatories on October 9, 1985.

The applicable regulation, 43 CFR 4.1139(b), sets forth the time frame in which a party is generally expected to submit answers to written interrogatories, but provides that the Administrative Law Judge may allow a shorter or longer period to file such answers. ^{2/} Clearly, it was within Judge McGuire's discretion to grant OSM's motion that Yeanev file answers to OSM's interrogatories by September 11, 1985, 7 days before the scheduled hearing. The record does not reflect that Yeanev registered any concern about this shorter time frame with Judge McGuire. In his statement of reasons to this Board, Yeanev states that he was without opportunity to respond to OSM's motion, since Judge McGuire entered his order shortening the time in which Yeanev was required to answer the interrogatories on the same day OSM's motion was received by Yeanev. However, Judge McGuire's order was entered on August 21, 1985, and Yeanev did not file his motion for a continuance of the hearing until September 5, 1985, shortly before the answers to interrogatories were due. We agree with OSM that Yeanev should have filed a motion pursuant to 43 CFR 4.1132(d), if the discovery schedule ordered by Judge McGuire imposed an undue burden.

^{2/} That regulation reads as follows:

"Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the party making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shorter or longer period as the administrative law judge may allow."

Counsel for Yeaneay asserts that he contacted counsel for OSM "to ask whether the continuance had been granted, and was informed that it had been" (Statement of Reasons at 2). In its answer, OSM admits the truth of this assertion (Answer at 2). In addition, Yeaneay's counsel states that counsel for OSM "indicated that he would not hold [Yeaneay] to strict compliance with the Order directing Answers to be filed, and [Yeaneay], in reasonable reliance thereon, did not formally move for an extension of time to respond" (Statement of Reasons at 3). Counsel for OSM denies that he agreed to a schedule for answering the interrogatories that was not in compliance with Judge McGuire's order; however, he states that he "may have indicated to counsel for petitioner/appellant that filing answers to the interrogatories by September 11, 1985, was no longer critical in view of the continuance which had been granted" (Answer at 3).

[1, 2] Yeaneay argues that his failure to provide answers to the interrogatories, as directed, did not prejudice OSM in any way. We agree. The preamble to the final rules governing surface coal mining hearings and appeals explains that the discovery regulations "track closely the language of the 'Federal Rules of Civil Procedure' and it is the intention of the Department that, where possible, in interpreting these rules, the body of case law regarding discovery which has evolved under the 'Federal Rules' be applicable to discovery problems arising under this Act." 43 FR 34379 (Aug. 3, 1978). Regulation 43 CFR 4.1139 mirrors in all material respects Rule 33 of the Federal Rules of Civil Procedure, 28 U.S.C. (1982). Rule 33, like other discovery rules, should be given a broad, liberal interpretation. See, e.g., Herbert v. Lands, 441 U.S. 153, 177 (1979). While a trial court has reasonable discretion to allow discovery under Rule 33, and to establish time periods for compliance with that rule, the Ninth Circuit in Bell v. Swift & Co., 283 F.2d 407 (9th Cir. 1960), stated that it was "bound to disregard any technical errors or defects which do not affect the substantial rights of the parties." Id. at 409. The Ninth Circuit articulated standards for evaluating an appeal based upon the failure of a party to answer interrogatories:

A lawsuit is not so rule-bound that one side wins whenever the other side breaks a rule. To succeed in an appeal based on an infraction of the rules, the appellant must show that the infraction was a substantial error prejudicing the appellant's case. Here, it may be said that the district court erred in refusing to require the defendant-appellee to answer interrogatories the plaintiff-appellant propounded. But the error, if any, raises only academic questions bearing on a fair and orderly system of justice. The appellant has not shown that he was hurt by the error.

283 F.2d at 408.

We think the reasoning of the Ninth Circuit is useful in resolving the present case. The interrogatories propounded to Yeaneay related to matters which were relevant to determining whether Yeaneay d.b.a. Black Hawk, as permittee of the involved minesite, was responsible for payment of the

reclamation fees. The answers to OSM's interrogatories which Yeanev filed on October 9, 1985, provide pertinent information, but we fail to see how Yeanev's failure to meet Judge McGuire's deadline amounts to "a substantial error prejudicing [OSM's] case." Moreover, in this case counsel for Yeanev was clearly misled by counsel for OSM's statement that a continuance had been granted. It was reasonable for counsel for Yeanev to assume that compliance with the answer deadline was not of the greatest priority, especially in light of counsel for OSM's admission that he may have given counsel for Yeanev just such an indication. To allow OSM to benefit on the basis of a procedural technicality under the circumstances of this case would be patently unfair.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the interior, 43 CFR 4.1, the order appealed from is reversed, and this matter is remanded to the Hearings Division for further proceedings.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

John H. Kelly
Administrative Judge